

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

November 20, 2014

- I. **CALL TO ORDER** – The meeting was called to order at 1:30 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Will Berkley; Mike Cravens; David Drake; Karen Mundy; Mike Owens, Chair; Frank Penn; Carolyn Plumlee; Carolyn Richardson; and Joseph Smith. Absent were Patrick Brewer and William Wilson.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Jimmy Emmons; Traci Wade; Tom Martin; Cheryl Gallt; Kelly Hunter; and Stephanie Cunningham. Other staff members present were: Tracy Jones and Andrea Brown, Department of Law; Casey Kaucher, Division of Traffic Engineering; Hillard Newman, Division of Engineering; Tim Queary, Urban Forester; and Greg Lengal and Joshua Thiel, Division of Fire and Emergency Services.

- II. **APPROVAL OF MINUTES** – A motion was made by Ms. Plumlee, seconded by Ms. Mundy, and carried 9-0 (Brewer and Wilson absent) to approve the minutes of the October 23, 2014, meeting.

III. **POSTPONEMENTS AND WITHDRAWALS**

A. **WILLIAM L. FITE ZONING MAP AMENDMENT & HARRY S. FITE PROPERTY ZONING DEVELOPMENT PLAN**

1. **MAR 2014-17: WILLIAM L. FITE** (11/20/14)* – petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Neighborhood Business (B-1) zone, for 1.06 net (1.19 gross) acres, for property located at 4464 Old Nicholasville Road.

COMPREHENSIVE PLAN AND PROPOSED USE

The subject property is located within the bounds of the South Nicholasville Road Small Area Plan, a plan adopted by the Planning Commission in 2009. The SAP's land use element recommends Low Density Residential (LD) future land use for the subject property, which is defined as 0-5 dwelling units per acre. This recommendation would suggest a maximum of five dwelling units on the property. More specifically for SubArea 3, the SAP recommends that future land use and development have very low vehicle trip generation due to lack of safe vehicular access in this area. The petitioner has requested a Neighborhood Business (B-1) zone in order to construct an 8,100 square-foot commercial building and associated off-street parking.

The Zoning Committee Recommended: **Disapproval**, for the reasons provided by staff.

The Staff Recommends: **Disapproval**, for the following reasons:

1. The requested change to a Neighborhood Business (B-1) zone is not in agreement with the South Nicholasville Road Small Area Plan (SAP), included by reference in the 2013 Comprehensive Plan, for the following reasons:
 - a. The subject property is located within SubArea 3 of the SAP study area, which encompassed about 20 acres along the east side of Nicholasville Road surrounding Cobblestone Road.
 - b. The SAP recommends Low Density Residential future land use (0-5 d.u./acre) for the subject property and the other remaining agriculturally zoned parcels along Old Nicholasville Road.
 - c. The SAP recommends that future land use and development have very low or no vehicle trip generators due to lack of safe vehicular access in this area. There are underlying traffic and access constraints for the SubArea, including the fact that the intersection of Old Nicholasville Road and Nicholasville Road is not signalized and the intersection is at a sharp angle. The intersection of Cobblestone Road, located about 700 feet to the north, is also not signalized. Without signalized intersections, access to and from southbound Nicholasville Road is a significant challenge, especially for commercial land use.
2. There has not been an unanticipated change in the economic, physical, or social nature within the area since the adoption of the 2013 Comprehensive Plan or the 2009 South Nicholasville Road Small Area Plan that has substantially altered the basic character of the area. The petitioner provided no justification to support such a finding and the staff was not able to identify any unanticipated changes that would pertain to this immediate area.
3. The requested B-1 zoning is inappropriate for the subject property, for the following reasons:
 - a. The access and traffic issues that exist in the immediate area should not be exacerbated by increasing the intensity of land use at this location. In this regard, the site does not have adequate public infrastructure; and the petitioner has not indicated willingness to, at a minimum, make necessary improvements to the site.
 - b. The site is not easily accessed from any nearby neighborhood, nor is there any indication in the application or on the face of the development plan as to what type of commercial land use is contemplated to serve such neighborhoods, as claimed by the petitioner.
 - c. Businesses typically desire visibility to attract customers, and this site has no visibility from the nearby thoroughfare (Nicholasville Road).

* - Denotes date by which Commission must either approve or disapprove request.

4. The proposed building setback and suburban design do not meet the newly adopted changes to the B-1 zone. Although the petitioner has not requested a variance, at least one would be necessary for the proposed development plan to be approved by the Planning Commission.
2. ZDP 2014-74: HARRY S. FITE PROPERTY (11/20/14)* - located at 4464 Old Nicholasville Road.
(Banks Engineering)

Note: The applicant requested postponement of this item prior to the October 2nd Subdivision Committee meeting.

The Subdivision Committee Recommended: **Postponement**. No use has been proposed for the proposed building.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote developer information.
7. Addition of topographic contours (5') and denote source.
8. Denote construction access.
9. Denote building height in feet.
10. Relocate parking statistics to site statistics.
11. Addition of lot coverage and street frontage to site statistics.
12. Replace Tree Preservation Plan with Tree Inventory Map, per Article 26 of the Zoning Ordinance.
13. Denote all existing and proposed easements.
14. Correct notes #5 and #9.
15. Delete notes #10 and #12 through #16.
16. Group all site statistics together.
17. Discuss possible improvements to Old Nicholasville Road.
18. Discuss storm water detention locations.
19. Discuss building setbacks and proposed landscape buffering along the residential properties.
20. Discuss pedestrian access into and through the site.
21. Discuss use of grass area in front of building.
22. Discuss location of open space areas proposed.

Petitioner Representation: Josh Banks, Banks Engineering, was present representing the petitioner. He requested indefinite postponement of this item.

Action: A motion was made by Mr. Penn, seconded by Ms. Mundy, and carried 9-0 (Brewer and Wilson absent) to indefinitely postpone MAR 2014-17 and ZDP 2014-74.

B. MILLER FAMILY ESTATE ZONING MAP AMENDMENT & MILLER FAMILY ESTATE DEVELOPMENT ZONING DEVELOPMENT PLAN

1. MARCV 2014-18: MILLER FAMILY ESTATE (1/4/15)* – petition for a zone map amendment from a Single Family Residential (R-1A) zone to a Community Center (CC) zone, for 2.38 net (2.79 gross) acres, for property located at 2575 Winchester Road (a portion of). A conditional use and variance are also requested with this zone change.

COMPREHENSIVE PLAN AND PROPOSED USE

The adopted Expansion Area Master Plan (Expansion Area 2A) recommends Expansion Area Residential-1 (EAR-1) future land use, which is defined as 0-3 dwelling units per gross acre, for the subject property.

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World. In addition, the Plan encourages a mix of uses, housing types and/or residential densities; development in a compatible, compact and contiguous manner; and provision of land for a diverse workforce.

The petitioner proposes a Community Center (CC) zone in order to develop the subject property with a commercial structure with two drive-through facilities, and associated off-street parking. The corollary development plan also depicts a church in the portion of the property outside of the Urban Service Area that is zoned R-1A. A conditional use for two drive-through facilities and a variance request to eliminate the residential requirement of the CC zone have also been requested with the zone change application.

* - Denotes date by which Commission must either approve or disapprove request.

The Zoning Committee Recommended: **Postponement**, for the reasons provided by staff.

The Staff Recommends: **Postponement**, for the following reasons:

1. The requested Community Center (CC) zone is not in agreement with the Expansion Area Master Plan (EAMP) land use plan.
2. The planned regional stormwater basin and realignment of Hume Road, necessary infrastructure designated by the EAMP for the property, have not been identified on the subject property.
3. The proposed development does not meet the intent or the requirements of the proposed Community Center (CC) zone, which is being requested.

2. CONDITIONAL USE AND VARIANCE

REQUESTED CONDITIONAL USE

1. Two drive-through facilities located on a single building.

REQUESTED VARIANCE

2. Waiver of Article 23A-9(k)(2), which states: "at least 40% of the aggregated floor area of buildings within a development in a CC zone shall be devoted to residential uses as permitted in EAR-3; schools, churches and their accessory structures; and public buildings."

The Zoning Committee Recommended: **Postponement**, in order to fully consider both in conjunction with the proposed zone change.

The Staff Recommends: **Disapproval of the requested conditional use**, for the following reason:

- a. Although potentially approvable, the requested conditional use of two drive-through facilities is speculative at this time. Major site plan changes are required in order to meet the minimum requirements of the Community Center (CC) zone, which will likely have a substantive effect on the appropriateness of the requested drive-through facilities.
- b. The applicant has not demonstrated how the proposed drive-through facilities on the subject property will be designed to accommodate the required design elements, or the pedestrian and residential components of the CC zone. As currently designed, the dual drive-throughs are designed for the traveling public and would be detrimental to these aspects of the Community Center zone that is intended to be devoted to pedestrian accommodation.

The Staff Recommends: **Disapproval of the requested variance**, for the following reasons:

- a. The requested variance to waive the residential (or non-commercial) requirement of the CC zone is not a permissible variance to grant, as it would essentially alter the allowable uses of the zone. Granting the variance would allow an increase in the commercial activity in the CC zone by eliminating the requirement for a residential use, which could have the effect of altering the minimum density required in the zone in question.
- b. Both KRS 100.247 and Article 7-6(b)(2) of the Zoning Ordinance prevent the Board of Adjustment, or, in this instance, the Planning Commission when acting as the Board, from approving the requested variance to waive the non-commercial use requirement of the Community Center (CC) zone because the requested variance will be contradictory to the Zoning Ordinance.

3. ZDP 2014-92: MILLER FAMILY ESTATE DEVELOPMENT (1/4/15)* - located at 2575 Winchester Road. (Carman & Associates)

The Subdivision Committee Recommended: **Postponement**. There are some questions regarding compliance with the EAMP and the proposed uses on the property.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property CC; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.

* - Denotes date by which Commission must either approve or disapprove request.

9. Denote developer's information per Art. 21-6(a) requirements.
10. Correct cross-section for Winchester Road.
11. Addition of existing and proposed easements.
12. Clarify tree inventory information and the purpose of circles shown on plan.
13. Dimension buildings.
14. Denote proposed height of building, in feet.
15. Denote BOA approval of proposed Church prior to plan certification.
16. Provided the Planning Commission grants the requested waiver.
17. Denote contour elevations and source.
18. Discuss proposed access.
19. Discuss proposed drive-through windows and lane separations.
20. Discuss compliance with the stormwater management plan in the EAMP.
21. Discuss sanitary sewer service per the provisions.
22. Discuss proposed uses in the CC zone, including residential ones.
23. Discuss potential subdivision of the property.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He requested a two-month postponement of this item in order to allow the petitioner time to meet further with staff.

Action: A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 9-0 (Brewer and Wilson absent) to postpone MARCV 2014-18 to the January 29, 2014, Planning Commission meeting.

C. NICOL DEVELOPMENT CO., LLC, ZONING MAP AMENDMENT & HEADLEY SUBDIVISION, NORTH BROADWAY PARK ADDITION, CARR BUILDERS (EMBRACE UNITED METHODIST CHURCH) ZONING DEVELOPMENT PLAN

1. MAR 2014-19: NICOL DEVELOPMENT CO., LLC (1/4/15)* – petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Mixed Use 2: Neighborhood Corridor (MU-2) zone, for 1.21 net (1.723 gross) acres; from a Neighborhood Business (B-1) zone to a Mixed Use 2: Neighborhood Corridor (MU-2) zone, for 0.420 net (0.652 gross) acre; and from a Wholesale and Warehouse Business (B-4) zone to a Mixed Use 2: Neighborhood Corridor (MU-2) zone, for 0.880 net and gross acre, for property located at 1001, 1003, 1011, 1015 and 1021 North Limestone Street.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The subject properties are located within the boundary of the Central Sector Small Area Plan (CSSAP), adopted by the Planning Commission in April 2009, specifically Subarea "D". The CSSAP recommends significant streetscape improvements along North Limestone, retention of North Limestone's unique character as a traditional neighborhood retail corridor, utilization of Best Management Practices for stormwater improvements, preservation of structures with historical and cultural value, and provision of adequate and quality affordable housing.

The petitioner proposes to redevelop the property for a mixed-income, mixed-use development that includes maintaining the church, constructing two buildings, and associated on-street and off-street parking. A total of 80 dwelling units, along with 5,200 square feet of non-residential space, are proposed within the two new buildings.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The requested Mixed Use-2: Neighborhood Corridor (MU-2) zone is in agreement with the 2013 Comprehensive Plan, and the Central Sector Small Area Plan (CSSAP), for the following reasons:
 - a. The petitioner proposes a mixed-income, mixed-use development that maintains a cultural and historic church along the North Limestone corridor. Redevelopment plans include construction of two new structures with 80 dwelling units, 74% of which will be income-verified affordable units, and neighborhood-oriented land uses, such as a community center, coin-operated laundry and offices.
 - b. The subject property is located within Sub-Area D of the Central Sector Small Area Plan, and North Limestone has been designated as a "neighborhood connector" corridor within this particular area and a "focus area."
 - c. One priority of the Sub-Area is to "retain unique character of North Limestone as a traditional neighborhood retail corridor" and also indicates a need to upgrade the North Limestone streetscape and building façades.
 - d. Associated with the redevelopment, the petitioner proposes significant stormwater improvements to alleviate existing drainage issues in the vicinity.
 - e. The petitioner's proposed development will be a more efficient use of underutilized and vacant properties within the North Limestone corridor, and be oriented to that minor arterial roadway.

* - Denotes date by which Commission must either approve or disapprove request.

- f. Many of the Comprehensive Plan's Goals and Objectives are met by the petitioner's proposed rezoning and redevelopment of the subject property, including: to expand housing choices (Theme A, Goal #1); to support infill and redevelopment (Theme A, Goal #2); to encourage green infrastructure (Theme B, Goal #3); to support creation of a variety of jobs (Theme C, Goal #1); to encourage an entrepreneurial spirit and embrace a diverse and inclusive community (Theme C, Goal #2); to build a multi-modal and comprehensive transportation system (Theme D, Goal #1); to enhance and protect cultural and historic resources (Theme D, Goal #3); and to uphold the Urban Services Area concept (Theme E, Goal #1).
- g. The Central Sector Small Area Plan encourages providing affordable housing, utilizing Best Management Practices for stormwater improvements, preservation of structures with historical and cultural value, and offering goods and services for local residents.
2. This recommendation is made subject to the approval and certification of ZDP 2014-94: Headley Subdivision, North Broadway Park Addition, Carr Builders (Embrace United Methodist Church), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
2. ZDP 2014-94: HEADLEY SUBDIVISION, NORTH BROADWAY PARK ADDITION, CARR BUILDERS (EMBRACE UNITED METHODIST CHURCH) (1/4/15)* - located at 1001, 1003, 1011, 1015 and 1021 North Limestone. **(Vision Engineering)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property MU-2; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Resolve proposed stormwater detention.
7. Resolve possible need for street improvements to north Broadway Park and 10th Street.
8. Resolve proposed front yard setback per Art. 28-4(f).
9. Resolve floor area ratio proposed on 1001-1003 North Limestone.
10. Resolve timing relative to compliance with Art. 28-4(h) for 1021 North Limestone.

Citizen Comment: Marty Clifford, president of the North Limestone Neighborhood Association, stated that he and other residents in the area were requesting a two-month postponement of this item in order to meet with the petitioner and get more information about the proposed development.

Petitioner Representation: Chris Westover, attorney, stated that the petitioner would respectfully request that this item be heard at this hearing. She said that the petitioner has met with the neighborhood residents; created a web site about the project; and solicited input from the neighbors about their questions and concerns. Ms. Westover explained that it would create a hardship for the petitioner to postpone this item for two months, since the proposed development has been in the works for over two years.

Commission Question: Mr. Owens asked Mr. Clifford to provide reasons for his request to postpone this item. Mr. Clifford replied that the petitioner approached him in early 2014 to discuss the proposed project. He said that, as president of the neighborhood association, he should have held community meetings to inform area residents about the project and get their input, but he failed to do so.

Citizen Comments and Discussion: Mr. Clifford said that he founded the North Limestone Neighborhood Association in 1998, and he has been its president ever since. He explained that, in 2004, he met with Chris King, Jim Duncan, and other LFUCG representatives to discuss the Small Area Plan for the North Limestone area, which he supports wholeheartedly. While he supports the plans for the area, he is concerned about the addition of the 80 units proposed in this development. Mr. Clifford stated that the residents of North Broadway Park, many of whom have resided there for more than 20 years, are the most concerned about the proposed development, since it will be located very near their residences.

Mr. Clifford stated that many area residents attempted to post comments to the petitioner's website, but they were never answered. He said that, during the 2004 discussions about a Small Area Plan, residents informed Planning staff members of their concerns about High Density Residential land uses in the neighborhood, but they later found out that recommendations to that effect were made in 2009.

Mr. Clifford noted that the petitioner had indicated a willingness to discuss residents' concerns; but, when he contacted them to request postponement of this item, they were unwilling to do so.

Mr. Owens asked when Mr. Clifford made his request for postponement. Mr. Clifford responded that he made that request to Van Meter Pettit on the morning of this hearing.

* - Denotes date by which Commission must either approve or disapprove request.

Don Bolton, 114 North Broadway Park, asked that the Planning Commission postpone this request, since the neighborhood residents have only had one month and one meeting in which to discuss the proposed development.

Donny House, 118 North Broadway Park, stated that residents have had only one meeting with the petitioner, at which they viewed renderings of the proposed development. He said that he is concerned about the addition of 160 new residents on his street, which currently has only 63 residents.

Andy Sloan, 1029 – 1039 North Limestone Street, stated that he read an article in the newspaper about the proposed development. He said that he has not received any additional information about the project, and requested a two-month postponement in order to allow residents time to gather information and make comments.

Roy Cornett, 136 Glenn Place, stated that a postponement would be suitable in this instance because approval of this request by the Commission today would begin the 90-day window in which the Urban County Council must make a decision. He said that he is concerned that, due to the holidays and the arrival of new Council members, that it is unlikely that the Council will be able to take action within 90 days, which would then result in the Planning Commission's recommendation taking effect without another hearing. Mr. Cornett asked that the Planning Commission postpone this request in order to allow the residents to organize, and to ensure that the Council will have time to act.

Ms. Westover stated that the petitioner would be willing to postpone this request to the Commission's December 18th meeting, in order to allow time to further discuss the neighbors' concerns and questions. She added that the petitioner believes that their concerns can be addressed.

Mr. Clifford stated that the area residents have indicated that they are not in favor of the proposed development. However, they suggested a two-month postponement in order to give the petitioner a chance to address their concerns, rather than "somebody coming in and telling us what's good for us."

Action: A motion was made by Mr. Cravens, seconded by Mr. Penn, and carried 9-0 (Brewer and Wilson absent) to postpone MAR 2014-19 to the December 18, 2014, Planning Commission meeting.

- D. CT 2014-1: NEW CINGULAR WIRELESS PCS, LLC (dba AT&T MOBILITY)** – an application for a 125-foot monopole cellular tower with a 5-foot lightning arrestor, proposed to be located at 302 Southland Drive.

Ms. Rackers stated that the staff had received a written request from the applicant's attorney for a postponement of this item until December 11, 2014.

Action: A motion was made by Ms. Plumlee, seconded by Ms. Richardson, and carried 9-0 (Brewer and Wilson absent) to postpone CT 2014-1 to the December 11, 2014, Planning Commission meeting.

- IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, November 6, 2014, at 8:30 a.m. The meeting was attended by Commission members: Will Berkley, Karen Mundy, Joe Smith, Frank Penn, Carolyn Plumlee, and Mike Owens. Committee members in attendance were: Hillard Newman, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Dave Jarman, Denice Bullock, Kelly Hunter, and Barbara Rackers, as well as Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire & Emergency Services and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- V. ZONING ITEMS** - The Zoning Committee met on Thursday, November 6, 2014, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Patrick Brewer, Mike Cravens, David Drake, Carolyn Richardson, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. PUBLIC HEARINGS ON ZONING MAP AMENDMENTS

- 1. BOARDMAN COMPANY, LLC, ZONING MAP AMENDMENT & FOREST PARK SUBDIVISION, BLOCK "E" (BOARDMAN COMPANY, LLC) ZONING DEVELOPMENT PLAN**

- a. **MAR 2014-20: BOARDMAN COMPANY, LLC (1/4/15)*** – petition for a zone map amendment from a Professional Office (P-1) zone to a Planned Neighborhood Residential (R-3) zone, for 0.530 net (0.845 gross) acre, for property located at 232 Waller Avenue.

* - Denotes date by which Commission must either approve or disapprove request.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has helped make Lexington-Fayette County the Horse Capital of the World.

The applicant proposes rezoning the subject property to a Planned Neighborhood Residential (R-3) zone in order to allow residential use of the first floor of the existing three-story structure. The corollary development plan depicts 12 dwelling units, which represents a density of 22.64 dwelling units per net acre.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The requested Planned Neighborhood Residential (R-3) zoning for the subject property is appropriate for the following reasons:
 - a. The property is surrounded by residential land uses of varying densities, and is the only non-residential zone on the east side of the Norfolk-Southern Railroad. The property would be more compatible with the surrounding zoning and uses if it were residentially zoned.
 - b. The majority of the subject property is being utilized for residential dwelling units, typically occupied by University of Kentucky students. The property is in close proximity to the University of Kentucky and can provide off-campus housing for students.
 - c. The building footprint and surface parking lot do not need to be modified to accommodate the change of use. Although the first floor was formerly occupied by a medical supply company for extra office and storage space, the first floor space has been difficult to lease due to the seemingly incompatible nature of office use and student housing in the same building and on the same lot.
 - d. The proposed rezoning is consistent with the 2013 Comprehensive Plan's goals to expand housing choices (Theme A, Goal #1), and encourage redevelopment that is an efficient use of land inside the Urban Service Area boundary and compatible with established neighborhoods (Theme E, Goal #1).
 2. The existing Professional Office (P-1) zone is inappropriate because no other professional office zone or use exists along Waller Avenue, between the Norfolk-Southern Railroad tracks and Nicholasville Road. In addition, the railroad tracks serve as an appropriate buffer between residential land uses and professional office land uses.
 3. This recommendation is made subject to approval and certification of ZDP 2014-93: Forest Park Subdivision, Block "E," (Boardman Company, LLC), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. ZDP 2014-93: FOREST PARK SUBDIVISION, BLOCK E (BOARDMAN COMPANY, LLC) (1/4/15)* - located at 232 Waller Avenue. (CMW)

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Division of Waste Management's approval of refuse collection locations.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Provide adjoining property owners' information.
10. Addition of number of dwelling units to site statistics.
11. Denote building height in feet.
12. Addition of existing utility easement.
13. Discuss square footage of Building not included in F.A.R. site statistics.

Zoning Presentation: Ms. Wade presented the staff report, explaining that the petitioner has requested rezoning from a Professional Office (P-1) zone to a Planned Neighborhood Residential (R-3) zone. The subject property is located on the south side of Waller Avenue, adjacent to the Norfolk-Southern railroad tracks. The general vicinity is characterized by mostly residential zoning on the east side of the tracks, with R-1C zoning to the south and R-2 zoning to the north and east; zoning on the other side of the railroad tracks is primarily Professional Office. Ms. Wade noted that the subject property has been the only property located on the east side of the railroad tracks with a non-residential zoning category since the 1960s.

* - Denotes date by which Commission must either approve or disapprove request.

Ms. Wade displayed an aerial photograph of the subject property, explaining that the petitioner proposes to retain the existing structure. The first floor is currently configured for professional office uses, with residential uses on the second and third floors. The petitioner is proposing to convert the first floor to all residential uses as well, for a total of 12 dwelling units on the property. Ms. Wade displayed the following photographs of the subject property: 1) a view of the existing structure; 2) a view down Waller Avenue, toward the railroad tracks to the west; 3) a view of Waller Avenue from the subject property to the east, toward Nicholasville Road; 4) the west side of the building, noting the existing parking on the site and open space to the rear.

Ms. Wade stated that the petitioner did not cite being in agreement with the Comprehensive Plan as a justification for the requested zone change. Rather, although they contend that the proposed zoning is consistent with the Plan's Goals & Objectives related to expanding housing choices; encouraging efficient redevelopment inside the Urban Service Area boundary; and creating compatible land uses within established neighborhoods. The petitioner also contends that the P-1 zone is inappropriate at this location, and the residential zone is appropriate. Ms. Wade stated that the staff agrees that residential zoning is more compatible at this location, since the subject property is surrounded by residential zoning. In addition, the majority of the surrounding area is occupied by student housing, and the second and third floors of the existing building are already occupied by University of Kentucky students.

Ms. Wade noted that the building footprint and surface parking will not need to be modified to accommodate the proposed change of use on the property. The first floor was occupied for a number of years by a medical supply company; but the space has been vacant and difficult to lease since that tenant left earlier in 2014, likely because the office use is not compatible with the student housing uses above that space. The railroad tracks also act as a logical boundary between the professional office uses on the west side of Waller Avenue, and the residential uses and zoning on the east side. Ms. Wade stated that, for those reasons, the staff is in agreement with the petitioner's justification for the requested zone change, and is recommending approval. The Zoning Committee also recommended approval of this request at their meeting two weeks ago.

Development Plan Presentation: Mr. Hunter presented the corollary zoning development plan, explaining with a rendering of that plan that the petitioner proposes to convert the first floor of the existing building, along with one parking space, to accommodate additional residential units. The petitioner proposes a total of 12 dwelling units, with 34 bedrooms.

Mr. Hunter stated that the Subdivision Committee recommended approval of this plan, subject to the following conditions listed on today's agenda. Following the Subdivision Committee meeting, the petitioner submitted a revised plan, which addressed conditions #9 – 13.

Thus, the staff has revised its recommendation to account for this revised plan, altering the recommended conditions as follows:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Division of Waste Management's approval of refuse collection locations.
8. Denote: Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements will be met prior to plan certification issuance of a building permit.
9. ~~Provide adjoining property owners' information.~~
10. ~~Addition of number of dwelling units to site statistics.~~
11. ~~Denote building height in feet.~~
12. ~~Addition of existing utility easement.~~
13. ~~Discuss square footage of Building not included in F.A.R. site statistics.~~

With regard to condition #10, Mr. Hunter stated that the petitioner had provided the site statistics on the plan. Condition #13 related to the staff's concern about the inclusion of mechanical spaces in the floor area ratio (FAR) calculation, but the petitioner was able to demonstrate that the plan met the FAR requirements. Mr. Hunter stated that the staff is recommending approval of this plan, subject to conditions #1 – 8, and that #9 – 13 can be deleted.

Commission Question: Ms. Plumlee asked what the height of the existing building is, to which Mr. Hunter responded that the building is 31.5' in height. He added that the maximum allowable height in the R-3 zone is 35'.

Development Plan Presentation (cont.): Mr. Sallee explained, with regard to condition #8, that the subject property is located on the edge of sewer bank WR4-3. Referring to a rendered Division of Water Quality Capacity Tracking IMS (CTIMS) map displayed on the overhead, he noted that bank is coded yellow, which indicates that, while some sewer

* - Denotes date by which Commission must either approve or disapprove request.

capacity is available, it is a very low number. That bank has just over 2,600 gallons per day of sewer capacity available. The staff estimates that the conversion of the first floor of the existing building on the subject property to residential use will generate approximately 500 – 1,000 additional gallons per day, for this proposed use.

Mr. Saltee said that the recommended addition to condition #8 was specifically made because of that low number. Because this a zoning development plan, it must be certified within two weeks of its approval, and the staff is concerned that the capacity of the sewer bank could go below its current number in that short amount of time. The staff is recommending, therefore, that condition #8 not be subject to the certification of this plan, but at the time of the issuance of a building permit for the property. The staff's recommendation would include the placement of a note on the plan, indicating that the capacity assurance requirements will be met, not within two weeks of the Planning Commission's approval action, but instead, at the time the petitioner attempts to obtain a building permit for the remodeling of the structure. The capacity of the bank could increase during that time period; but, if it does not, the petitioner would have to meet the ordinary Capacity Assurance Program requirements prior to the issuance of a building permit. Mr. Saltee noted that the placement of a note on the plan should ensure that the capacity issue is addressed, while not holding up the routine zone change process.

Commission Discussion: Ms. Plumlee asked if the petitioner would be denied a building permit if sufficient capacity does not exist. Mr. Saltee answered that the petitioner would either be wait-listed, or would be encouraged to pursue other options such as sump pump redirections to increase the available capacity.

Mr. Berkley stated that he hoped that capacity in this area of Lexington-Fayette County would be addressed soon.

Petitioner Representation: Brad Boaz, CMW Architects & Engineers, was present representing the petitioner. With regard to condition #8, he noted that, by his calculations, the proposed changes to the existing structure on the subject property would add 367 gallons per day to this bank. He said that the petitioner recognizes that the available capacity is low; but they would like to obtain a building permit as soon as possible, so they are willing to use the staff's wording for a note on the plan.

Mr. Saltee said that the petitioner has the ability to reserve the capacity at any time, not just at the time of application for a building permit. He explained that the petitioner would simply need to submit the necessary paperwork to the Division of Water Quality to reserve the capacity while it is still available. The petitioner would then document, at the time of the building permit, that they had an active capacity reservation for the site.

Mr. Boaz stated that the petitioner is in agreement with condition #8, as well as the other conditions, and he requested approval.

Citizen Comments: There were no citizens present to comment on this request.

Zoning Action: A motion was made by Mr. Penn, seconded by Mr. Cravens, and carried 9-0 (Brewer and Wilson absent) to approve MAR 2014-20, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Penn, seconded by Mr. Cravens, and carried 9-0 (Brewer and Wilson absent) to approve ZDP 2014-93, subject to the first seven conditions as listed, changing condition #8 to read that Capacity Assurance requirements will be met at the time of the building permit.

5. RML CONSTRUCTION, LLP, ZONING MAP AMENDMENT & CADENTOWN SUBDIVISION, LOT 10 (BRIGHTON 3050) ZONING DEVELOPMENT PLAN

- a. MARV 2014-22: RML CONSTRUCTION, LLP (1/4/15)* – petition for a zone map amendment from a Single Family Residential (R-1D) zone to a High Density Apartment (R-4) zone, for 0.33 net (0.50 gross) acre; and from a Single Family Residential (R-1D) zone to a Neighborhood Business (B-1) zone, for 0.02 net (0.23 gross) acre, for property located at 2985 Liberty Road (a portion of). Variances are also requested with this zone change.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The petitioner proposes rezoning the portion of the property that was recently purchased and consolidated in September 2014. The petitioner proposes a High Density Apartment (R-4) zone for a majority of the subject property (0.33 acres) to allow for construction of a 12-unit apartment building, which is planned to be incorporated into the nearby "Brighton 3050" (formerly "The Summit") apartment complex. The petitioner also proposes a Neighborhood Business (B-1) zone for the

* - Denotes date by which Commission must either approve or disapprove request.

remainder of the property (0.02 acres) to allow for the parking lot for an approved mixed-use building to continue. Overall, the site is planned to now have 52 dwelling units with the addition of the small triangle-shaped parcel of land.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The requested High Density Apartment (R-4) zone and Neighborhood Business (B-1) zone are appropriate and the existing Single Family Residential (R-1D) zone is inappropriate, for the following reasons:
 - a. Single family residential development is possible at this location, although the surrounding uses suggest that a more intense use of the property is more appropriate. The more appropriate and efficient use of the property is to incorporate it into the adjacent mixed-use development.
 - b. The proposed rezoning of the subject property will allow uses in keeping with the existing character of the area. The subject property fronts on Liberty Road and adjoins both planned and built higher density residential development to the north and east. The property is also adjacent to the commercial development to the south and west. This portion of the Urban Service Area has developed with a combination of neighborhood business and office uses fronting along Man o' War Boulevard, with residential uses located to the rear of the business uses or along Liberty Road.
 - c. The petitioner's proposed rezoning is generally in keeping with the established development pattern of the immediate area, because the planned neighborhood business zoning will extend to generally the same boundary as that for the CVS Pharmacy located directly across Liberty Road.
2. This recommendation is made subject to the approval and certification of ZDP 2014-95: Cadentown Subdivision, Lot 10 (Brighton 3050) (Amd.), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. REQUESTED VARIANCES

1. Eliminate the B-1 to R-4 zone-to-zone screening and vehicular use area screening requirements internal to the site on property located at 2985 Liberty Road.
2. Reduce the front yard setback in the R-4 zone from 20 feet to 5 feet along Liberty Road in order to construct parking in the otherwise required front yard.

The Zoning Committee Recommended: **Approval of the requested variances**, for the reasons provided by staff.

The Staff Recommends: **Approval of the requested variances**, for the following reasons:

- a. Granting the requested landscape and setback variances will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. The variances are requested because providing the required landscaping between the B-1 and R-4 zones, which would result in a disjointed parking lot design, would be contrary to the applicant's intent to integrate the mixture of commercial and residential uses.
- b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance because zone-to-zone screening is designed to "require buffering between incompatible land uses," and the proposed mix of land uses will be compatible (rather than incompatible) with each other. Landscaping will be provided by the developer throughout the property that will accomplish the purpose of the general provisions of Article 18 without impairing the mixed-use development concept associated with this proposal.
- c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is the intent to develop a small mixed-use development that will be integrated into the existing apartment complex and will complement the existing Brighton Place shopping center.
- d. Strict application of the requirements of the Zoning Ordinance would deprive the applicant of a reasonable use of the property and would create an unnecessary hardship because the internal screening of the uses would be contrary to the concept of a useable open space for this development.
- e. Although the circumstances surrounding the requested variances are because of the proposed zone change, the variances are requested in an effort to accomplish a more efficient design, and the placement of the landscaping in more appropriate locations on the subject property.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property R-4 & B-1; otherwise, any Commission action of approval of these variances is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan; as amended by a future Development Plan approved by the Commission; or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].
4. Prior to obtaining an Occupancy Permit, the applicant shall obtain a Zoning Compliance Permit from the Division of Planning.

* - Denotes date by which Commission must either approve or disapprove request.

- c. ZDP 2014-95: CADENTOWN SUBDIVISION, LOT 10 (BRIGHTON 3050) (AMD) (1/4/15)* - located at 2985 Liberty Road (a portion of). **(EA Partners)**

Note: The purpose of this amendment is to rezone the property that has been consolidated and revise the layout.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-4 & B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Dimension driveway off access drive.
7. Addition of building height in site statistics.
8. Addition of floor area and square footage in site statistics.
9. Provided the Planning Commission approves a landscape variance and a variance to Art. 16-4(c) to the proposed parking in the required front yard.
10. Discuss need for sidewalk connection on northeast side of property.
11. Discuss need for tree protection on the northwest side of property.

Zoning Presentation: Ms. Wade presented the staff report for this requested zone change, briefly orienting the Commission to the location of the subject property on Liberty Road. She stated that the petitioner is requesting the R-4 zone for the bulk of the property, with a B-1 zone proposed for a very small portion to the south. The property is located north of Old Todds Road, and adjacent to Liberty Road and the entrance to the existing Brighton Place Shoppes development.

Ms. Wade noted that, earlier this year, the petitioner had requested a zone change to R-4 and B-1 for the other (eastern) portion of the subject parcel, which was approved. The petitioner was able to purchase this (western) portion of the property in September 2014, and is now proposing to expand their existing development to include a small apartment building for 12 residential units. The B-1 portion of this request was proposed in order to "square up" the B-1 area, with parking depicted on the corollary development plan in that area.

Ms. Wade stated that the subject property is surrounded primarily by residential development, with townhouses to the north and the Brighton 3050 apartment complex, also owned by the petitioner, to the northeast. Some business zoning is located to the south of the subject property at Old Todds Road and Liberty Road, where there are restaurants, a pharmacy, and automobile-related uses. Ms. Wade displayed an aerial photograph of the property, noting the portion of the subject parcel that was previously rezoned.

Ms. Wade explained that the subject property was also previously part of a parcel that is now located across Liberty Road, fronting on Cadentown Lane. With the construction of Liberty Road, the property was severed into two parcels. Following the purchase of the subject property, the petitioner consolidated it with a plat into their existing development. The petitioner is requesting the R-4 zone in order to further expand the apartment development. The petitioner contends that the existing R-1D zone is no longer appropriate at this location, but the proposed R-4 and B-1 zones are appropriate, because they would be compatible with the adjacent development. Ms. Wade stated that the staff and the Zoning Committee recommended approval of this request, for the reasons more fully listed in the staff report and on the agenda.

Development Plan Presentation: Ms. Gallt presented the zoning development plan, and relying upon a rendered version, noted the location of the additional apartment building proposed for the property. She said that the Subdivision Committee recommended approval of this plan, subject to 11 conditions as listed on the agenda. Condition #10 could now be changed to read "resolve," since the petitioner agreed at the Subdivision Committee meeting to connect the sidewalk for the proposed new building to the existing development on the northeast side of the property. Condition #11 refers to the need for a Tree Protection Area (TPA) on the property.

Ms. Gallt said that the staff had distributed copies of an email from Tim Queary, Urban Forester, noting that a TPA would not be necessary on the northwest side of the property, since no significant trees were found there. She added that condition #11 could now be deleted.

Variance Presentation: Mr. Emmons presented the staff report on the requested variances, noting that the petitioner was requesting to vary the landscape requirements and shift the location of the parking area.

Mr. Emmons stated that the petitioner is requesting a landscape variance to the zone-to-zone screening requirement between the B-1 and R-4 zones on the subject property, for a length of less than 20 feet. The Landscape Review Committee reviewed this request, and recommended approval of the requested variance, which is an extension of the zone-to-zone screening variance granted by the Planning Commission along with the recent zone change on the subject property, earlier this year.

* - Denotes date by which Commission must either approve or disapprove request.

Mr. Emmons said that the petitioner is also requesting a front yard variance from 20 feet to 5 feet along Liberty Road, in order to construct parking in the otherwise required front yard. There are approximately 15 parking spaces proposed in that area, as depicted on the development plan. The petitioner will provide landscaping for that area according to the vehicular use area screening requirements, just as it is provided in the existing adjacent B-1 parking area. Mr. Emmons stated that, as the staff was reviewing this request, they found a large common greenspace between the two new apartment buildings. Should the variance not be granted, the petitioner could redesign the property in order to provide that required parking between the buildings and move the greenspace closer to Liberty Road. The staff does not believe, however, that that option would provide the best open space design for the project.

Mr. Emmons stated that the general purpose of the zone-to-zone screening requirements are to separate land uses, but the primary intent of this rezoning request is to integrate residential and business uses into the same development. He said that the staff is recommending approval of both of the requested variances, for the reasons as listed in the staff report and on the agenda, subject to the four conditions as listed. Those four conditions mimic those that were recommended as part of the approval of the variance that was granted for the adjacent zone change earlier in 2014.

Commission Question: Ms. Plumlee asked if the existing bush honeysuckle on the property would need to be preserved. Mr. Emmons answered that it would not need to be maintained. Ms. Plumlee asked, with regard to Mr. Queary's email, if the honeysuckle would need to be replaced with another planting. Mr. Emmons answered that the typical vehicular use area screening of a 3' hedge and trees every 40' would be required in that area. Mr. Sallee added that there is not a requirement for screening between the R-3 and R-4 zones along this property line.

Petitioner Representation: Rena Wiseman, attorney, was present representing the petitioner. She stated that the petitioner is in agreement with all of the staff's recommendations, including the modifications to the development plan and the conditions as recommended by Ms. Gallt.

Citizen Comment: There were no citizens present to comment on this request.

Zoning Action: A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 9-0 (Brewer and Wilson absent) to approve MARV 2014-22, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 9-0 (Brewer and Wilson absent) to approve the requested variances, for the reasons provided by staff, subject to the four conditions as listed.

Development Plan Action: A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 9-0 (Brewer and Wilson absent) to approve ZDP 2014-95, subject to the first nine conditions; changing #10 to read: "Resolve need for sidewalk connection on northeast side of property;" and deleting condition #11.

VI. **COMMISSION ITEMS** – No such items were presented.

VII. **STAFF ITEMS** – No such items were presented.

VIII. **AUDIENCE ITEMS** – No such items were presented.

IX. **MEETING DATES FOR December, 2014**

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	December 4, 2014
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	December 4, 2014
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	December 11, 2014
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	December 17, 2014
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	December 18, 2014

X. **ADJOURNMENT** – There being no further business, Chairman Owens declared the meeting adjourned at 2:20 p.m.

TLW/TM/CT/BJR/BS/src